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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

9 NICHOLAS DOUGLAS, TASHEKA BRYAN,)
10 JUNIOR HARRIS, MARCUS RICHARDS,)
11 STEPHANEY SMITH, and those)
12 similarly situated,)
13 Plaintiffs,)
14 vs.) Case No: CV 18-62-BU-SEH
15) Status Hearing
16 YELLOWSTONE CLUB OPERATIONS, LLC,)
17 and HOSPITALITY STAFFING)
18 SOLUTIONS, LLC,)
19 Defendants.)

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BEFORE THE HONORABLE SAM E. HADDON
UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF MONTANA

Paul G. Hatfield Federal Courthouse
901 Front Street
Helena, Montana 59626

Tuesday, November 10, 2020
10:03 a.m. to 11:19 a.m.

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MORNING SESSION, TUESDAY, NOVEMBER 10, 2020

(Whereupon, the court convened at 10:03 a.m., with all interested parties present, and the following proceedings were had:)

THE COURT: Madam Clerk, will you call this matter for us, please.

THE CLERK: This Court will now conduct a status conference in Cause No. CV-18-62-BU-SEH, Douglas versus Yellowstone Club Operations, et al.

THE COURT: Well, Counsel, welcome to Montana, those of you that are from out of state. I believe we have Mr. David Seligman on behalf of Plaintiff, with others. Mr. Jeffrey Roth is here on behalf of the Defendant Yellowstone Club Operations; Ms. Lauren Zeldin on behalf of Hospitality Services.

And we have other counsel who are here who have not identified themselves as intending to have speaking roles, but if you need to address the Court at any time, you're, of course, entitled and welcome to do so. We'll ask any of those who speak for the first time to introduce themselves so that the record will be clear.

For your information, Counsel, as you may know or you may not know, we have in place in this district a wear-mask-in-the-courtroom rule which each individual judge is entitled to set aside if he or she wishes. That is what we do in this

1 courtroom. If any participant wishes to remove his or her mask
2 in addressing the Court or in participating in this proceeding
3 you are certainly entitled to do so but that is optional.

4 So that we might keep all of this in some perspective,
5 Counsel, this case has been pending since September 20 of 2018,
6 something over two years. It has been, in practical terms,
7 limbo since mid-June of 2020 when a noticed of settlement was
8 filed with the Court.

9 A number of deadlines had been established by the Court
10 prior to those most recent developments relating to settlement.
11 Those deadlines have been vacated and for the information of
12 everyone we are essentially, Counsel, at square one in this
13 lawsuit in terms of progress if this case does not stay on track
14 to be settled.

15 We have a large, in the view of the Court, a number of
16 issues that will have to be addressed and resolved if the case
17 is to go forward. This conference, however, had been set and
18 continued for some time because of coronavirus issues postponed
19 until today's date.

20 I am hopeful that we will be in a position collectively to
21 continue to move the case forward with reasonable dispatch and
22 to do whatever is necessary to get a settlement completed, if
23 that is to be done, or if it is not to be settled to put this
24 case on a meaningful track to get the pretrial matters addressed
25 and resolved and the case ready for trial.

1 So that's the framework, Counsel, and what I propose to do
2 this morning is take up with you first the proposed settlement
3 program that the Plaintiff has put together and filed with the
4 Court. We have some responses from the Defendants, and we're
5 going to take those up in, I trust, a reasonable sequence, and
6 we'll start with the some basics.

7 And I should say before we start that we're going to be
8 talking this morning, Counsel, about a number of specific dollar
9 amounts that are in one way or another related to the issues in
10 the case of the proposed settlement. The Court has reviewed
11 these materials in detail, and I suggest that we all be prepared
12 to accept that what you are going to hear from the Court are the
13 best estimates that the Court can provide to you based upon the
14 materials that have been filed.

15 All of these amounts, specific dollar amounts, that we may
16 talk about are subject to necessary final check comparison and
17 verification before any of them might be accepted as final, but
18 I think they are adequate for what we are going to try to
19 accomplish today.

20 And you should also understand that in reciting some of
21 these numbers that we'll be talking about today the Court has
22 assumed the accuracy of the various calculations that have been
23 made by a statistician employed by the Plaintiff. We have not
24 endeavored to crosscheck that person's calculations and numbers,
25 but for purposes of today's proceeding we assume they are

1 accurate.

2 But with that as the framework let's see if we can get
3 underway. We have a proposed settlement of this case for the
4 sum of \$1 million. There are to be certain amounts by the
5 proposal deducted from the gross settlement of \$1 million
6 starting with an attorneys' fees deduction of \$250,000.

7 We are informed that cost items have been incurred to date
8 approximately \$6000 in costs by plaintiffs' Counsel and another
9 \$8577 in administrative costs that have been incurred for a
10 total of \$14,757.

11 It is the Court's understanding and indeed assumption,
12 based upon the materials provided, that those numbers, the
13 administrative costs incurred by administrator or the costs
14 incurred by counsel for the Plaintiff, are likely to change and
15 indeed are likely to increase if the program for settlement of
16 the case goes forward as intended.

17 Am I correct about that? Anyone disagree with that
18 proposition that we are going to have an expected increase in
19 out-of-pocket costs to be taken into account in resolving this
20 matter? Anyone disagree with that?

21 MR. SELIGMAN: Your Honor, if I may?

22 THE COURT: Yes. It's customary to stand, Counsel.

23 MR. SELIGMAN: Apologies, Your Honor.

24 So if you're asking whether -- if increased costs would be
25 incurred, for example, if continuing to litigate the matters

1 related to the approval of the settlement, I think that may be
2 right, but I expect those costs to be very minimal.

3 THE COURT: Well, whatever they are, I expect the normal
4 course of operations to follow that Counsel are going to come to
5 the Court at some point and say, "Judge, the costs have been
6 gone up and we think they have to be taken into account." Is
7 there any disagreement about that?

8 MR. SELIGMAN: No, Your Honor, and that would happen before
9 final approval.

10 THE COURT: All right. And do I understand, Counsel, that
11 for purposes of this component of the proceedings any increase
12 in costs is going to be a deduction from the net amount of money
13 available to pay to the members of the class in a settlement?

14 MR. SELIGMAN: That would be the case, Your Honor, but
15 again I don't anticipate --

16 THE COURT: Counsel, we're not talking about quantities of
17 dollars; I'm just wanting to be sure that I understand what
18 position of the parties is on where this money is going to come
19 from.

20 MR. SELIGMAN: Yes, Your Honor.

21 THE COURT: All right. Well, to continue on with this, as
22 proposed, the calculations that are made and before the Court as
23 part of the proposal is that there is a total of \$171,935 .70 in
24 wages that the members of the punitive class claim they are
25 entitled to receive that have not been paid.

1 And these would be wages that are claimed to be owing to
2 the members of the class group for either regular or overtime
3 work that the Plaintiffs say have not been paid for. There is a
4 separate item that is figured or calculated at a total dollar
5 amount of \$306,118.43 that are characterized in the papers as
6 unpaid service charges. And those are to be distributed to
7 class members if the case is settled, and it is a class action,
8 according to a formula that has been worked out and proposed to
9 the Court.

10 We have an additional amount to be deducted from the \$1
11 million settlement gross which is \$100,000 and that is to be
12 allocated to payment of class representative fees at the rate of
13 \$20,000 per class representative for five separate class
14 representatives.

15 Taking those numbers into account and making the necessary
16 deductions a net fund using this set of calculations of
17 \$157,368.87 would remain after payment of these other items in a
18 common pot or common fund to be distributed to the class members
19 according to the formula calculation that has been proposed.

20 Just to recap that, Counsel, we have a million dollar
21 settlement, a proposal to deduct \$250,000 off the top for
22 attorney fees, to deduct an additional \$14,557 for costs, and to
23 deduct \$100,000 for representative fees, to pay out \$171,935.70
24 in unpaid wages that the Plaintiffs assert to be due and not yet
25 paid, and to distribute \$306,118.43 to members of the class

1 group as compensation for service charges.

2 With all of those deductions the remaining amount of money
3 available for distribution would be \$157,368.87. As I have
4 said, Counsel, those are numbers that are best calculations the
5 Court can make from the existing paperwork. They are all
6 subject to final review and verification if necessary to bring
7 the matter to conclusion.

8 The service charge component of this proposal, which is
9 calculated at \$306,118.43, is what the Plaintiffs assert to be
10 allocated for that particular component of the settlement and to
11 be paid to the members of the class group as compensation for
12 these, what are said to be, unpaid service charges.

13 That \$306,118.43 total has been computed under a formula
14 that has been proposed to the Court, taking each of the four
15 groups that are said to make up the intended class; 6
16 bartenders, 32 housekeepers, 32 cooks, and 30 servers. That's a
17 total of 90 participants. The class itself is said to be 83
18 persons however, but some of these persons in the 90 group are
19 represented to have held two different positions.

20 A computation has been made that reaches and totals the
21 306,118.42 by addressing and taking into account the number of
22 hours each group worked; that is the total hours worked by
23 bartenders, which is claimed to be 2,179.58 hours; the
24 housekeepers are said to have worked 17,076 hours, and -- a
25 small percentage; cooks are said to have worked 25,142 hours --

1 almost 143; and servers have worked or said to have worked
2 18,268.22 hours.

3 And a calculation of an hourly rate for service charges for
4 each of these groups has been proposed to the Court. That
5 hourly rate is \$13.12 per hour for bartenders; \$1.38 per hour
6 for housekeepers; \$1.67 per hour for cooks, and \$11.60 per hour
7 for servers. And from that assumption of hourly rate and the
8 hours worked, the total amount claimed for each group has been
9 computed and added together which reaches the \$306,118.42.

10 If we carry that computation through and divide the totals
11 for each group by the number of persons in the group, it works
12 out that bartenders would receive as service charge compensation
13 \$4,761.42; housekeepers would receive \$1,074.80; cooks would
14 receive \$1,310.65; and servers would receive \$7,064.84 each.

15 That would be additional compensation to be received by
16 these four groups as proposed for service charges. And that, as
17 I said, if added up reaches to the penny \$306,118.43 that the
18 Plaintiffs assert they are entitled to receive in this
19 settlement for service charges.

20 Now, a question for Counsel: Am to understand, Counsel,
21 that this service charge payment, whatever it turns out to be,
22 if it's made, will be income to the members of the group? Is
23 that agreed?

24 MR. SELIGMAN: Yes, Your Honor.

25 THE COURT: And are we agreed that that is W-2 class

1 income, wage income?

2 MR. SELIGMAN: That's right, Your Honor, that's what the
3 settlement agreement calls for.

4 THE COURT: All right. And that would be the same for any
5 wages that are paid to these members of the group, any part of
6 the group, for either regular or overtime hours that are
7 asserted not to have been paid for?

8 MR. SELIGMAN: Yes, Your Honor.

9 THE COURT: All right. Now, and within this proposal, we
10 have \$157,368.87 that is money that would remain after payment
11 of lawyers' fees and costs and payment of wages and payment of
12 service charges that is otherwise available for distribution.

13 And that, as I understand it, is proposed by the Plaintiff
14 to simply divide that by the number of people in the entire
15 group and to allocate that fund out to each and all of the
16 members of the class or members of the class group, and that
17 turns out, by the calculations the Court has, to be \$1,096.01
18 each, correct?

19 MR. SELIGMAN: Yes, Your Honor.

20 THE COURT: All right.

21 MR. SELIGMAN: That amount is, of course, subject to change
22 depending on whether the Court approves subsequent motion for
23 attorney fees.

24 THE COURT: Well, yes, I understand that; and as I'm
25 calculating these numbers, Counsel, I am assuming for purposes

1 of our discussions that these amounts that have been requested
2 would ultimately be allowed. We're starting with a million
3 dollar settlement; we're going to allocate -- if this is carried
4 through -- \$250,000 for attorneys' fees, an additional amount
5 for attorneys' costs, an additional amount for administrative
6 costs, pay wages that are said to be owing, pay service charges
7 that are said to be owing, pay the class representatives, and
8 distribute the remain \$157,367.87 pro rata among the 83 members
9 of the class.

10 MR. SELIGMAN: Yes, Your Honor.

11 THE COURT: All right. Then I think we understand each
12 other.

13 Now, let's pick up from there, Counsel. It is the reality
14 of this lawsuit that we don't have a class certified at this
15 point. We don't have a class identified at this point. But I
16 am being asked to approve a class settlement for a group that is
17 now identified to have 83 persons within it working in four
18 separate occupations for some period of time.

19 And the Plaintiff proposes a class definition as follows:
20 All employees of YCO and HSS who worked at the Yellowstone Club
21 on nonimmigrant visas during the winter of 2017-2018. That is
22 the proposed class that had been recommended to the Court by
23 Plaintiffs' Counsel.

24 And as I said, we have not yet certified a class of any
25 definition for purposes of this case; and, in fact, Court has

1 not yet certified this to be a class action lawsuit. Now, it
2 appears to the Court, and I suggest to everyone that's here,
3 that we have a more specific group than what was proposed by the
4 Plaintiff that we are in fact dealing with.

5 It appears, and I accept, that there are now asserted to be
6 83 persons who fit within this group that is to be called a
7 class; that all of these persons, all 83, are citizens of the
8 country of Jamaica; that all of these persons were hired through
9 a common recruiting format; and at that point we have, it
10 appears to the Court, a disagreement about who they worked for.

11 We have paperwork in this file that suggests these persons
12 were to be employees of Yellowstone Club Operations. It also
13 appears to the Court that they were in fact not paid as
14 employees of Yellowstone Club Operations but were in fact were
15 paid as employees of Hospitality Solutions. Am I correct about
16 that as to pleadings asserted -- positions asserted in the
17 pleadings?

18 MS. ZELDIN: Your Honor, Lauren Zeldin for Hospitality
19 Staffing Solutions. It's our position that the punitive class
20 members were jointly employed by both entities, Your Honor.

21 THE COURT: You say they are joint employees?

22 MS. ZELDIN: That they were paid through our payroll that
23 was --

24 THE COURT: Well, how do -- you explain to me, if you wish,
25 Counsel -- you can do it now or we can do it later, how do you

1 have a joint employee who is paid by one employer and not by the
2 other?

3 MS. ZELDIN: Your Honor, we were -- our position is that
4 the employees were brought on as employees of Yellowstone Club,
5 and my client was hired to help with recruiting, payroll, and
6 administrative functions. So we did process their hours and
7 their payroll and paid them, but their day-to-day job duties and
8 direction were supervised by Yellowstone Club.

9 THE COURT: All right. Well, let's be specific. Each one
10 of these persons received a paycheck every week or two weeks,
11 did he or she?

12 MS. ZELDIN: Yes.

13 THE COURT: Who wrote the checks?

14 MS. ZELDIN: They came from Hospitality Staffing Solutions.

15 THE COURT: And what happens to Yellowstone Club Operations
16 as an employer under that scenario that you described?

17 MS. ZELDIN: It would be our position, Your Honor, that
18 they were also an employer because they were direct --

19 THE COURT: But they are not signing paychecks, are they?

20 MS. ZELDIN: They --

21 THE COURT: I'm asking, Counsel.

22 MS. ZELDIN: Oh. They remitted funds to us to compensate
23 the employees for their hours and we wrote the checks.

24 THE COURT: I'll try to be more clear, Counsel. Is there
25 anything of record that suggests that these 83 persons, or

1 whatever the ultimate number turns out to be, were in fact
2 working for Yellowstone Club Operations?

3 MS. ZELDIN: Yes, Your Honor.

4 THE COURT: What?

5 MS. ZELDIN: The filings that were attached to the
6 Complaint that were submitted.

7 THE COURT: No, I'm not talking about filings attached to
8 the Complaint, Counsel. I'm talking about what these people who
9 are on the job walk up to the payroll person at the end of a
10 week or two weeks and they get a check. Who wrote the check?

11 MS. ZELDIN: The checks came from Hospitality Staffing
12 Solutions.

13 THE COURT: All right. Is there any record that suggests
14 that Yellowstone Club Operations served as an employer for
15 these people on a day-to-day basis?

16 MS. ZELDIN: Your Honor, are you asking about pay records
17 or --

18 THE COURT: I'm asking about anything that would support
19 your position that these people work for Yellowstone Club
20 Operations which is what you have asserted.

21 MS. ZELDIN: The fact that Yellowstone hires them from
22 Jamaica and represents to the Department of Labor that they were
23 going to employ them for the season as well as the fact that
24 they directed their day-to-day work.

25 THE COURT: Well, bear with me Counsel, because I frankly

1 don't understand how you can say that these people worked for
2 Yellowstone Club Operations when every piece of payroll record
3 that I know exists came from Hospitality Solutions.

4 MS. ZELDIN: Your Honor, if the case were to proceed there
5 would be evidence and documentation that would show the
6 direction of work on a day-to-day basis work from Yellowstone
7 Club, but the parties have -- that's part of what we are trying
8 to settle, Your Honor, is that we do not wish to continue to
9 pursue that factual dispute.

10 THE COURT: Well, it will certainly have to be pursued if
11 this case is pursued. I take it because what you're telling me
12 sounds like we have a fundamental dispute over who these people
13 worked for.

14 MR. ROTH: That is.

15 THE COURT: Do I misunderstand your position on that,
16 Counsel?

17 MS. ZELDIN: I believe there is a dispute -- there is a
18 dispute between the Defendants as to who employed the
19 Plaintiffs; that is correct, Your Honor.

20 THE COURT: Do we have cross-claims in this lawsuit that
21 are going to sort that out?

22 MS. ZELDIN: The Defendants have endeavored to settle that
23 dispute, Your Honor.

24 THE COURT: Well, in all due respect, Counsel, you can do
25 whatever you want to by way of settlement, but I must deal with

1 the record as it exists.

2 MS. ZELDIN: Yes, Your Honor.

3 THE COURT: And I think you're telling me that we have
4 payroll records and other paperwork that suggests that these
5 people were employed by Hospitality Solutions, but you really
6 think they were working for Yellowstone Club Operations or at
7 least in part?

8 MS. ZELDIN: Yes, Your Honor.

9 MR. ROTH: Your Honor, may I?

10 THE COURT: Certainly.

11 MR. ROTH: Thank you, Your Honor.

12 THE COURT: We are going to have to sort this out at some
13 level or else you're going to have to reach some sort of
14 agreement among yourselves as to how's it's to be handled if
15 this case is litigated. If you don't settle you can and will be
16 expected to litigate these issues.

17 MS. ZELDIN: Your Honor, if it's helpful, if I may, before
18 Jeff speaks, we do have a provision in the settlement agreement
19 that the tax liability, the employer's share of the tax
20 liability on the wage settlements, it would be attributed to
21 HSS, but it would come out of the settlement fund so --

22 THE COURT: I don't think we can resolve that level of
23 detail here today, but I take it to be that we have a dispute
24 unresolved on the record as to who these people work for. Do
25 you take the position that they work for Yellowstone Club

1 Operations. We have some records, at least the Court believes
2 we have records, that suggest they work for Hospitality
3 Solutions. I don't know how here today we can resolve that
4 dispute.

5 MR. ROTH: Your Honor, if I may?

6 THE COURT: Yes, go right ahead.

7 MR. ROTH: We do not have cross-claims existing between the
8 two Defendants. I think both HSS and YCO recognize that if the
9 case were to proceed and go beyond settlement that we would
10 incur significant risks that both parties would be found under
11 federal law as joint employers.

12 And we think there is a significant -- you know, we contest
13 that, but we think that if the case were to go on through
14 litigation and go to trial, there's a reasonably strong chance
15 that someone, whether it be the Judge or the jury, would find
16 that we're joint employers for the purposes of law.

17 And despite the fact, I mean, as the Court recognizes and
18 Ms. Zeldin has talked about, HSS did cut the paychecks, but on
19 the other hand YCO did recruit these people to a certain extent,
20 and we did oversee their day-to-day work for the Yellowstone
21 Club.

22 And so there is -- there's some gray there, frankly, Your
23 Honor. And while YCO certainly agrees with the Court's
24 identification of the pay process, we also recognize that if it
25 were to go down the road, and we were not to settle the case,

1 that we would face significant risk of being found as a joint
2 employer.

3 THE COURT: Mr. Seligman, what is your position on who the
4 employer is?

5 MR. SELIGMAN: Your Honor, Plaintiffs -- both YCO and HSS,
6 are joint employers; that's certainly what we would be able to
7 establish at trial.

8 THE COURT: You take the position that this was a joint
9 employment?

10 MR. SELIGMAN: That's right, Your Honor.

11 THE COURT: And how in summary fashion do you expect to
12 prove that as distinct from the position that's being asserted
13 by the Defendants?

14 MR. SELIGMAN: I'm not sure that the facts we would put
15 before the Court are distinct from the facts that have already
16 been discussed, namely day-to-day --

17 THE COURT: In all due respect, Counsel, that wasn't my
18 question. How do you intend to prove that Yellowstone Club was
19 an employer of this group of people? And do you say the same
20 rule applies across the board that every one of these people was
21 both an employee of Yellowstone Club Operations and an employee
22 of Solutions?

23 MR. SELIGMAN: Yes, Your Honor. All of the members of the
24 class were recruited by the Yellowstone Club to work in the
25 United States. For all the members of the class, Yellowstone

1 Club informed the Department of Labor that Yellowstone Club
2 would be the employer.

3 And for all the members of the punitive class, Yellowstone
4 Club supervised their day-to-day employment. That would be --
5 those would be the allegations that would support our claims for
6 joint employment. Importantly, that issue does not need to be
7 resolved today.

8 THE COURT: Well, it may never be resolved if this case
9 settles, and I understand that, Counsel; but I am obliged to
10 approach today's proceedings, and unless and until this case is
11 settled, on the basis that we may have all of this we're talking
12 about fall apart, and we will all be on a conventional track to
13 get this case ready for trial.

14 That is the focus that this court must remain at the fore,
15 and I don't want us to lose track of that. This court exists as
16 a trial court, not as a means for pressuring people into
17 settlement. If you want to settle this case and we can work out
18 the details, we'll help you get it done; but you'll not get any
19 pressure from this Court to settle a case that is not ready for
20 settlement on all the components and proposed as it is as a
21 class action.

22 The number of issues to be addressed, of which we are
23 talking about only one, are going to have to be sorted out. And
24 I don't mean to overemphasize that, Counsel, but we will have to
25 address these issues appropriately. We can't sweep them under

1 the rug as if it really doesn't matter who these people work
2 for. All right. Enough of that. We will deal with that issue
3 of who these people work for separately, if necessary.

4 Let's go back to the question of the class definition. The
5 Plaintiffs have proposed, as I said, a class that is to be
6 defined as all employees of Yellowstone Club Operations, YCO and
7 HSS, who work at the Yellowstone Club on nonimmigrant visas
8 during the winter of 2017 and 2018. That's the Plaintiff's
9 proposed class.

10 MR. ROTH: Your Honor?

11 THE COURT: Yes.

12 MR. ROTH: Sorry, Your Honor. I think that must have been
13 the original proposed definition under the settlement agreement,
14 the proposed settlement agreement that's attached as Exhibit 1
15 to Document 64, the definition is a little bit different.

16 THE COURT: All right. Read it to me as you assert it to
17 now be.

18 MR. ROTH: Certainly, Your Honor. It's: All persons who
19 worked at the Yellowstone Club between October 2017 and May 2018
20 on nonimmigrant H2B visas and who were on the payroll of HSS
21 during that period but excludes any individuals who submit a
22 valid and timely opt-out request in accordance with Subsection
23 5.1 hearing.

24 THE COURT: And all of that is what you assert to now be
25 the proposed class definition?

1 MR. ROTH: That's correct, Your Honor; that's on Document
2 64-1, page 4, it's Section 1.5.

3 THE COURT: Is there anything filed of record other than in
4 this settlement document that redefines the class to the
5 language you have suggested?

6 MR. ROTH: It may be. I don't have it right -- I don't
7 have the page open, but it may be defined that way within the
8 body of Document 64.

9 THE COURT: What about that, Mr. Seligman?

10 MR. SELIGMAN: Yes, it is, Your Honor. On page 11 --

11 THE COURT: It is what?

12 MR. SELIGMAN: The proposed class definition for purposes
13 of preliminary approval of the class settlement is both
14 contained within the settlement agreement and in the motion for
15 preliminary approval at Document 64, page 11.

16 THE COURT: Well, that suggests that if we are going to
17 adopt that class definition we are going to have to adopt the
18 settlement, and I don't think it works that way, Counsel. I
19 think the system contemplates when we get a class defined and
20 then we talk about what to do about resolving the claims of the
21 class.

22 MR. SELIGMAN: Your Honor, under Federal Rule of Civil
23 Procedure 23(e)(1) the Court would, for the purposes of
24 preliminary approval of a class action settlement the Court can
25 find that it is likely to approve the class --

1 THE COURT: I haven't done that, Counsel. And I'm just
2 trying to be candid with all of you. I haven't even made a
3 determination of whether this case can even be a class action,
4 and I have some serious reservations about that component of the
5 picture. Because it is a reality that we've got 83 people here
6 who worked different hours at different jobs at different rates,
7 and every last one of these people has, if any claim at all, an
8 individual claim for what he or she says he or she is owed.

9 That is a reality of this case and looms large in the mind
10 of the Court as to whether or not this case can or should
11 proceed as a class action. We may have 83 individual claims by
12 83 different Jamaican citizens each seeking his or her
13 compensation that he or she thinks he or she is entitled to
14 receive. Do you disagree with that?

15 MR. SELIGMAN: Your Honor, I do disagree respectfully.

16 You're right that the damages amounts may vary depending on
17 the individual. We account for that in the proposed plan of
18 allocation. Importantly, there is no dispute, you know, among
19 the parties for settlement purposes that the punitive class
20 meets the Rule 23 standards --

21 THE COURT: Well, that's the settlement agreement, perhaps,
22 Counsel. Let me talk with you about something else. What is
23 the hourly rate that you claim your clients were entitled to
24 receive as a bartender?

25 MR. SELIGMAN: Your Honor, the hourly rates for the

1 purposes of the allocation, we determined --

2 THE COURT: No, I'm not asking but allocation for purposes
3 of a settlement. I assume, Counsel, that you believe that
4 people who were hired as bartenders were hired at an
5 agreed-upon hourly rate. Do you disagree with that?

6 MR. SELIGMAN: Yes, Your Honor.

7 THE COURT: You disagree with that?

8 MR. SELIGMAN: No, I do not disagree with that.

9 THE COURT: All right. What was the rate that you assert
10 bartenders were hired to receive per hour for regular work --
11 regular hourly work performed?

12 MR. SELIGMAN: I believe the amount that they were paid by
13 HSS, you'll have to bear what me --

14 THE COURT: I can tell you what they were paid, I've got
15 the numbers. Bartenders were paid \$11 per hour, that's what
16 they were paid on the payroll records. There is an assertion in
17 this lawsuit that they were to have received \$14.11 per hour --

18 MR. SELIGMAN: Yes, Your Honor.

19 THE COURT: -- for regular time. I'm asking you, what is
20 your position?

21 MR. SELIGMAN: My position is that they should have been
22 paid \$14.11.

23 THE COURT: All right. Upon what do you base that
24 conclusion? How do I get to the conclusions that bartenders
25 were to receive by agreement with the employer \$14.11 per hour?

1 MR. SELIGMAN: At trial we would argue that bartenders who
2 are members of the punitive class should have been paid the
3 amount that their comparators outside were paid or --

4 THE COURT: The amount that what?

5 MR. SELIGMAN: That comparators outside of the class were
6 paid; on average that amount is \$14.11 per hour.

7 THE COURT: Well, do you assert that the bartenders in this
8 group had an agreement with their employer to be paid 14.11?

9 MR. SELIGMAN: No, Your Honor.

10 THE COURT: How am I to assume that 14.11 is the rate they
11 should be paid? What's the proof of that?

12 MR. SELIGMAN: That is what comparators outside of the
13 class.

14 THE COURT: Do we know that comparators, as you call them,
15 entered into the negotiation process when they were selecting
16 people to be hired as bartenders and how much to be paid?

17 MR. SELIGMAN: Your Honor, this is not a contract dispute
18 it's a dispute under Title VII of the Civil Rights Act. So the
19 amounts that they should have been paid, we say, are the amounts
20 they would have been paid if they were not part of this
21 protected class.

22 THE COURT: If they are not part of the protected class.

23 MR. SELIGMAN: They are not part of the protected class;
24 mainly black Jamaican citizens.

25 THE COURT: And what about this group of people makes them

1 entitled to receive \$14.11 per hour if they are hired as
2 bartenders, because I'm missing that from what has been
3 disclosed to this Court?

4 MR. SELIGMAN: At trial, Your Honor?

5 THE COURT: Absolutely. I'm talking about trial evidence,
6 admissible evidence that goes before the trier of fact.

7 MR. SELIGMAN: At trial we intend and we would submit
8 substantial evidence about the capabilities of these workers and
9 that they are at least as capable as their comparators.

10 THE COURT: That may not be a matter of controversy,
11 Counsel, but any employer-employee relationship has to have at
12 bottom some sort of a transaction agreement about what the
13 employee is to be paid. Or do you disagree with that?

14 MR. SELIGMAN: I don't disagree with that, Your Honor, but
15 Title VII of the Civil Rights Act cannot -- your rights under
16 Title VII under the Civil Rights Act cannot be waived by
17 contract.

18 THE COURT: And how would you say there was a waiver?

19 MR. SELIGMAN: There wasn't; that's my point, Your Honor.

20 The only reason that they were -- Plaintiffs' position is
21 the reason they were paid different amounts is because of an
22 illegal discrimination. That is our position. And that's what
23 we'd be prepared to bring before a jury.

24 Now, I understand that is not Defendants' position. But
25 again under Rule 23(e)(2) right which is not the stage we are at

1 now, that's a subsequent stage, we'd ask the Court to approve
2 the settlement considering the risks on both sides which we
3 agree exist here. The costs of continuing with the litigation
4 and the that fact in the delay that would follow from proceeding
5 the case for pursuing the case through final judgment.

6 THE COURT: Well, Counsel, I'm looking at the numbers that
7 have been provided to the Court, and the dollar amounts that the
8 Court had been provided support the following: That bartenders
9 were paid \$11 per hour; that cooks were paid \$12 per hour; that
10 housekeeping we are paid \$11.02 per hour; and that servers were
11 paid \$11 per hour.

12 The contention of the Plaintiff and the contention that is
13 contained in this proposed settlement does not track with that
14 set of numbers just read. The assertion by the Plaintiff is
15 that the Plaintiff bartenders should have been paid at \$14.11
16 per hour; that cooks should have been \$16.16 per hour; that
17 housekeepers that should have been paid \$13.26 per hour; and
18 that servers should have been paid \$11.57 per hour.

19 In Summary that each of these groups was substantially
20 underpaid from what you claim they should have been paid. Do I
21 misunderstand you?

22 MR. SELIGMAN: No, Your Honor; that is our contention.

23 THE COURT: All right. And do you have a similar spread in
24 overtime? The overtime rates paid were 16.50, 18, 16.53, and
25 16.50; and you have claimed that overtime rates should have been

1 calculated higher at 21.16, 24.24, 19.88, and 17.36. Is your
2 position on overtime that you don't have a specific agreement to
3 it these rates, but you think that has to be paid because of
4 your assertive position in the lawsuit?

5 MR. SELIGMAN: Those are our assertions, yes.

6 THE COURT: All right. That's just what I'm trying to find
7 out, Counsel.

8 All right. Well, let's see if we can talk about some other
9 things. Within the numbers that have been provided to the Court
10 is a figure of \$136,656.24. That is the total amount paid as
11 bonuses to the 83 to 90 people who are in what is said to be the
12 Plaintiffs' class group.

13 I do not see that any credit has been used or allowed as an
14 offset for that amount of money that was paid to these people as
15 bonuses against the \$306,118.43 that has claimed as the service
16 charges; can you explain that?

17 MR. SELIGMAN: Yes, Your Honor. There's a dispute about
18 the nature of the bonuses. It's Plaintiffs' position that the
19 bonuses were a separate payment obligation and should not be
20 used to offset the service charge underpayments --

21 THE COURT: All right. So you think that's a separate deal
22 that has no place in this computation of a settlement?

23 MR. SELIGMAN: That's correct, Your Honor. In addition,
24 there's allegation in our Complaint that there were deductions
25 improperly taken off of those bonuses, but because there are

1 risks on both sides with respect to those issues, the parties
2 have excluded them from consideration for the purposes of --

3 THE COURT: Well, I don't think you've excluded it; you've
4 counted, as I read it, you think that you're entitled to whole
5 \$306,000 which is the gross amount of service charges that your
6 computation shows.

7 MR. SELIGMAN: That's right, according to -- we allege that
8 the bonuses were a separate payment obligation.

9 THE COURT: I understand that. I understand that. For
10 purposes of your computation, you don't think that the
11 Defendants should receive any offset as it were for the bonuses
12 paid?

13 MR. SELIGMAN: That's right, Your Honor.

14 THE COURT: All right. Fair enough. I understand that.

15 Counsel, let's see if we can't be a bit more specific about
16 some aspects of this picture that's before the Court as a
17 proposal. To be blunt about it, Counsel, I am shocked by the
18 request for \$100,000 to be paid for five representatives as
19 class representatives for what has been done in this case.

20 I am not inclined on the basis of what I have before us,
21 and all that has been put into the briefs, to allocate \$100,000
22 to five people for what appears to the Court to be minimal work.
23 Now, if that becomes an issue to be addressed and resolved, we
24 can litigate it.

25 And it is a matter of course that is addressed ultimately

1 to the discretion of the Court, and we will look at the record,
2 because that's my job, is to look at the record and find out
3 what was done and who did it and what the reasonable rate of
4 return for that kind of effort ought to be.

5 But I am telling you that I don't have anything before the
6 Court today including all that is said in the briefs that have
7 been filed that warrant \$20,000 per person for five persons for
8 accomplishing the settlement that has been proposed to this
9 Court.

10 That is a serious matter and we will not move this case
11 ahead absent resolution of that issue because I'm not going to
12 approve blanket statement a hundred thousand dollars for class
13 representative fees on the basis of the record that's before the
14 Court today.

15 There may be a record to be developed that would entirely
16 justify that or might even justify something more than that, but
17 that's not what we have today. And you're asking me to address
18 a settlement proposal that comes as a package, and this is a
19 component of it.

20 So I'm suggesting to you, Counsel, if we are going to be
21 capable of bringing this matter to resolution by settlement, it
22 will not be on at basis of everybody simply holding their hard
23 ground, no compromise, no adjustment, no modification.
24 Settlement is by definition just that. It is a compromise
25 reached.

1 And what I have before the Court is a proposal from the
2 Plaintiff that seeks, as we have outlined earlier, that includes
3 a hundred thousand dollars for representatives' fees and also
4 does not include any offset for bonuses that were received which
5 totaled, according to the Court's calculation \$136,656.24.

6 So I think that's sort of where we are, Counsel. So to
7 bring us back to the specifics, we do not have a defined class.
8 The Court has not declared this case to be a class action
9 lawsuit. We do not have, it appears, any firm agreement on what
10 the hourly rate at which these people were to be paid either for
11 regular time or overtime.

12 We do not have an agreement about whether or not the
13 bonuses paid should be allowed as an offset against the service
14 charges that are asserted. And there may be other issues that
15 are present in the mix that I haven't talked about.

16 But let me give you some other numbers to think about,
17 Counsel. And I've done this because it does appear that this
18 case is one that ought to receive serious consideration for
19 settlement, but that will ultimately be up to you.

20 But let's make some assumptions or hypotheticals; let's
21 start with a million dollar settlement package/pot. We'll
22 reduce that amount by \$250,000 off the top to pay the lawyers.
23 We reduce that million by another \$14,577 to pay costs. We
24 reduce that amount by an additional sum of which for discussion
25 purposes I'll fix at \$50,000 to pay class representatives -- not

1 \$100,000 but 50,000.

2 And instead of the Plaintiffs seeking or recovering
3 \$306,118.43 for service charges that we would reduce that amount
4 by the amount of bonuses paid to bring a net amount for service
5 charges still to be paid, 169,462.19.

6 If we add all those numbers together, that is the million
7 dollars and deduct from that lawyers fees, costs,
8 representatives' fees, unpaid wages, and service charges, that
9 totals up to be \$655,974.89. Of that \$655,000, that covers
10 all -- that pays every employee all that he or she is seeking by
11 way of wages, regular and overtime.

12 It pays a portion of what the Plaintiff is seeking as
13 service charges, and it pays \$50,000 to the class
14 representatives and that set of computations leaves, for
15 distribution to the class, if it be defined as a class
16 \$344,025.11.

17 That is several thousands of dollars in excess of the
18 amount of money available for distribution above payouts as
19 proposed by the plaintiffs. If you divide that up by 83 persons
20 it figures out to be, by the calculations the Court has made,
21 that each of these employees would receive \$4,144.88.

22 Each employee would receive that amount in addition to
23 being paid for all wages that are claimed to be due and a
24 portion of the \$169,462.19 in service charges. That is a net
25 increase in money in the pocket for every member of this class

1 except for the class representatives.

2 That is an alternate suggestion, Counselor, and I propose
3 it to you as simply that; if we're talking settlement here, if
4 we're talking about trying to get this case resolved, then you,
5 in Court's view, might want to consider those alternative
6 numbers.

7 If it's not acceptable to the parties, then we simply don't
8 have a settlement; and if we don't have a settlement, we do what
9 we do in every case, we get the case ready for trial and we take
10 it to trial.

11 MR. SELIGMAN: Your Honor, if I may, I may not have been
12 following the math here. It seems like so what you're
13 suggesting there is a reduction in the amounts paid to class
14 representatives?

15 THE COURT: Absolutely, \$50,000 reduction.

16 MR. SELIGMAN: And that's within Court's discretion so it's
17 not -- that, to be clear, there is no motion before the Court
18 now.

19 THE COURT: Absolutely -- Counsel, this is a hypothetical,
20 I endeavor to pose it as such. I'm endeavoring to encourage
21 some dialog that might bring the parties to a point that you
22 can -- if this is your objective -- to get this case resolved
23 without spending hundreds and thousands of dollars on lawyers'
24 fees and costs.

25 There is a value to everyone sitting in this room to bring

1 this case to conclusion by resolution if that can be done. I've
2 been in this business for something over 50 years, and I don't
3 claim to know all there is to know, but I do know something
4 about the costs of litigation.

5 And you are right at the threshold on all sides of being at
6 the point you're going to start spending a lot of time, effort,
7 and energy on matters related to the litigation process. You
8 can avoid that if you settle this case now. You won't avoid it
9 if you drag it out and we start down the path of discovery and
10 motion practices.

11 MR. SELIGMAN: Absolutely, Your Honor, and that's why the
12 parties have a proposed settlement before you, precisely --

13 THE COURT: And I understand that and I have been candid
14 with you as I can, Counsel. I am not prepared to define a class
15 and accept the settlement proposal that the Plaintiffs have laid
16 before the Court.

17 MR. SELIGMAN: That the parties have jointly laid the
18 proposal.

19 THE COURT: I understand that, Counsel, but in your
20 comments you seem to ignore that this Court in a class action
21 has a, what the Court views as a different role from what it
22 might have in a customary two-party litigation process. I have
23 the members of the class group, if it is to be defined as a
24 class, to take into account and to make sure that their
25 interests are protected.

1 MR. SELIGMAN: Absolutely, Your Honor. And with respect to
2 that point, just to be clear, and I understand Your Honor's
3 point to awards to class representatives, but with respect to
4 the Court's critical role here, which we absolutely respect and
5 appreciate and appreciate how seriously you're taking that role,
6 which it is to ensure fairness for the absent class members.

7 As I understand it there is no dispute among the parties
8 that the amounts distributed to the class members, even less
9 attorney fees, even less amounts potentially paid to class
10 representatives exceeds the pecuniary damages in this case.
11 Everyone agrees about that and it seems that Your Honor agrees
12 about that as well.

13 THE COURT: Well, we've got by one calculation
14 we've got over \$300,000 that exceeds all the monies that
15 anybody's parted with or is entitled to receive.

16 MR. SELIGMAN: Your Honor, the amount, of course Plaintiffs
17 also assert that they are entitled to emotional distress
18 damages --

19 THE COURT: I understand all of those, Counsel. I don't
20 disagree with you about your contentions, but contentions are
21 one thing. Settlement of the case is an entirely different
22 creature. And, Counsel, I don't want to be troubling anyone
23 with unnecessary expenditure of time.

24 You have put before this Court a proposal from the
25 Plaintiff. The Court has made hypothetically a suggestion as to

1 an alternate approach with some adjustments in the numbers. If
2 the parties don't want that, all you need to do is tell me that
3 and we will shut this process of settlement down, and we will
4 get this case ready for trial.

5 That's my alternative. You will not hear me time and time
6 again coming back and saying, "How are you working toward
7 settlement?" I don't do that. It's not -- in my view, it's not
8 the role of the job of the Court. If you want to settle it, you
9 make a proposal.

10 If the Court thinks that proposal won't worth, the Court
11 can suggest, which is all I've done, some alternatives. If you
12 don't like the alternatives, you're entitled to say, "We don't
13 like them. We don't want them. We won't accept them." That
14 switches the game plan over to get the case ready for trial, and
15 that's my job; fundamentally, that's my job.

16 MR. SELIGMAN: Your Honor, to clarify something, I
17 understood your point about payments to class representatives.
18 The other suggestions, did that include a decrease in the amount
19 of the gross settlement?

20 THE COURT: No, absolutely not. I'm not suggesting
21 anything like that, Counsel. I'm not suggesting that the gross
22 amount be reduced from \$1 million. I'm not suggested there be
23 one penny ducked from the \$250,000 that the lawyers want to
24 fees. I'm not suggesting that anything other than a
25 reimbursement for cost expended be undertaken.

1 I am suggesting as a part of an alternative proposal,
2 hypothetically, that this representatives' fee is grossly
3 overstated as it was presented to the Court; that it should be
4 reduced by at least 50 percent, and I am suggesting that in the
5 interest of fairness of representation of the parties, the
6 litigants, the people in the group that we're calling a class --
7 that what the Court has proposed ups the money available to them
8 by twice what the Plaintiff proposed.

9 MR. SELIGMAN: Okay. I understand, Your Honor. We'd be
10 happy to -- I believe we took note of your proposal, which is a
11 proposal for allocation. And we'd be very happy if the Court
12 deems it appropriate to discuss internally --

13 THE COURT: Of course.

14 MR. SELIGMAN: -- but I suspect --

15 THE COURT: Absolutely. In fact, I am prepared to make
16 some suggestions to you on that, and I leave this topic at this
17 point, Counsel. If you want to settle this case, in my humble
18 opinion, you have the numbers before you, and you have the skill
19 and acumen of counsel capable of getting it resolved.

20 If you don't want to settle it, if your representation
21 roles, if you don't think you're doing the right thing by the
22 people you represent to settle this case on some basis, perhaps
23 as suggested by the Court, that's your decision. We'll live
24 with it. That's my job; my job is not to force you to
25 settlement.

1 My job is to be here to try the case for you if it is to go
2 to trial. I took that oath 20 years ago, I intend to stay with
3 it. I am not one of these judges who looks forward to forcing
4 counsel to settle cases.

5 MS. ZELDIN: Your Honor, if I may? I wanted to correct for
6 the record and just make sure that it is clear when we were
7 talking earlier about costs, this settlement that the parties
8 have proposed to you today, which we understand will be perhaps
9 revised in allocation, provides for the employer tax liability
10 to come out of the settlement fund. So I just wanted to make
11 sure that Your Honor's numbers may change.

12 THE COURT: That's a detail, Counsel, you're going to have
13 to work that out.

14 MS. ZELDIN: Thank you. I just want to make that clear.

15 THE COURT: To put a finer point on that, Counsel, if you
16 agree upon numbers you're going to get an additional settlement
17 from this Court, and that is for you to go away and work out the
18 details for how it's to be accomplished.

19 Don't expect this Court to handhold you through the process
20 of dividing up the dollars and cents of a million dollars that's
21 to go to somewhere. That's your job. But you're entirely
22 capable of doing that, and I have no doubt about it. When the
23 numbers have been crunched appropriately and they are compiled
24 and presented to the Court, we can get the job done.

25 That is, in my view, a manageable assignment, but I don't

1 intend to offer the services of this Court or assume the
2 services of this Court to handhold you through all of the detail
3 of working out the details of the settlement.

4 MR. ROTH: Your Honor, if I may?

5 THE COURT: Sure.

6 MR. ROTH: If the parties -- obviously you have given us
7 some suggestion regarding the allocations, and let's just set
8 that aside for a moment. If that weren't an issue, I just want
9 to make sure we understand what other information the Court
10 needs from us to get through with the settlement.

11 And I understand you have questions about the class
12 definition, so if we handle the allocation and we take your
13 suggestion, and we come up with the appropriate class definition
14 that the Court approves, is there anything else that the Court
15 needs from us?

16 THE COURT: Counsel, I think there are -- there were. Put
17 it this ways in the mind of the Court if we approach this matter
18 today, one was the class definition. One and separate was the
19 amount of money to be paid to class representatives, and the
20 third was what it is to do with this \$136,000 that was paid as
21 bonuses.

22 Those were three significant components, and in the mind of
23 the Court, were matters that needed to be addressed if this case
24 was going to get resolved by settlement. If you get those
25 numbers worked out and everybody has agreed as to the numbers,

1 then I think these other issues related to class definition and
2 how the money's to be allocated and paid, and on the point of
3 payment, I have assumed, Counsel, that all of the money that's
4 going to be paid out to members of this class, if we call it a
5 class, are going to be paid out as wages.

6 I don't see in this picture anyone proposing to me that
7 some part of this fund money that would ultimately wind up in
8 the hands of the members of the group would be considered
9 something in the nature of damages that aren't treated as
10 income.

11 MR. SELIGMAN: Your Honor, all of it would be damages
12 treated as income.

13 THE COURT: All right.

14 MR. SELIGMAN: But some of it be treated as wages.

15 THE COURT: That's all I need to know.

16 MR. SELIGMAN: Yeah.

17 THE COURT: Somebody -- you people, among your group, is
18 going to have to decide how do you divide that up if a person
19 who is a member of the group is going to get a check -- pick a
20 number, 5,000 -- he's going to have a gross number of \$5,000.
21 He's not going to receive a check for \$5,000, obviously.

22 There's going to be money taken out of that to pay the
23 government, pay the state, pay other tax entities that may be
24 involved, each employee is going to get a net amount check. I
25 expect all of that to be worked out.

1 MR. SELIGMAN: Your Honor, that is worked out in the
2 settlement agreement.

3 THE COURT: I understand that. But the settlement
4 agreement, Counsel, and I don't purport to say that I could
5 regurgitate to you all the details of the settlement agreement,
6 but some components of the settlement agreement that you have
7 worked out, if the proposal suggested by the Court is ultimately
8 accepted, some of those are going to have to be changed anyway.

9 What I'm going to need to look at is a package that you are
10 all, on both sides, agreed to and that I can look at and make a
11 determination in good conscious that this is the right thing to
12 do to resolve the case.

13 MR. SELIGMAN: Your Honor, if I may suggest, I think that I
14 want to look a little bit more at your suggested figures. But
15 the parties here have come to a settlement agreement, we've
16 worked well together, I see no reason why we couldn't resolve
17 these issues now today.

18 And I would, because we are still of this early stage in
19 the settlement process, again this is the preliminary approval
20 for purposes of distributing notice. I think that we have an
21 interest of getting notice out as promptly as possible, and I
22 suggest that -- if the Court is open to it -- that the parties
23 take a -- we can take a recess now.

24 THE COURT: No. That'll answer that, Counsel. I have
25 other assignments that I must take care of later today. I'm

1 prepared to take whatever time we need for this hearing, and I
2 would expect that if we are talking about something in the
3 nature of a settlement that's going to resolve the interest of
4 every one of these people that someone needs to assume the
5 responsibility of communicating with the clients about whether
6 or not what lawyers are negotiating in the courtroom is
7 acceptable to the clients.

8 I've never, in my experience, which is not complete,
9 certainly for everyone, but I can't imagine lawyers attempting
10 to settle a case out without talking with the client or at least
11 representatives of the client group to make sure that it's
12 acceptable.

13 MR. SELIGMAN: To that point, Your Honor, you know, it's
14 certainly Plaintiffs' perspective while the class
15 representatives understand that there is a proposal before the
16 Court to seek \$100,000 in payments to class representatives,
17 they also understand that that amount is entirely within the
18 discretion of the Court.

19 THE COURT: Well, Counsel, here's the best I can do. I'm
20 going to give you some time, and I'm not going to put a deadline
21 on it that's in the view of the Court unrealistic, but I will
22 give you as lawyers until Friday, December 4th, close of
23 business, Montana time, 4:45 p.m. on December 4th, to look at
24 this suggested resolution that the Court has put to you, make a
25 decision about it and notify the Court, yes or no.

1 If it's yes, then you will receive an additional assignment
2 from the Court to undertake whatever you have to do to bring the
3 components of the settlement to fruition and get it done. If
4 you don't choose to accept the proposal, and there's no
5 reasonable way to get the case resolved within the framework of
6 what we talked about, then you can say that, and you can go to
7 work on alternate tasks which will be to get the case ready for
8 trial in the view of the Court.

9 And we will take up one by one these issues that we've
10 talked about here today: Is it to be a class action? If it is
11 to be a class action, what is the definition of the class? And
12 what do we do about this issue of who is the employer? That is
13 not resolved. What are we to do about the question of how much
14 per hour were these people to get paid?

15 Those are all, in the view of the Court, serious questions
16 that would have to be resolved if the case is to be litigated.
17 And I don't wish to make the task any larger for any of us than
18 is necessary, but we will do what is necessary to put this case
19 together properly and try it appropriately, if that's the route
20 that we follow.

21 But I encourage you to negotiate it as you see fit, and you
22 have until December 4th to give me an answer. I think that's as
23 far as we can go today, Counsel. I encourage you in your work,
24 there is nothing that matches up, in my view, lawyers who are
25 capable of doing their job. It is the essence of our

1 profession, and I commend you to that task.

2 And if we don't resolve it by settlement then overstate the
3 issue that we're here to try the case, that's what we do. Okay.
4 All right.

5 MS. ZELDIN: Thank you.

6 THE COURT: All right. You have until December the 4th to
7 let the Court know. And in the meantime, we will await your
8 communication to the Court. Thank you, all.

9 (Whereupon, the proceedings concluded at 11:19 a.m.)
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REPORTER'S CERTIFICATE

I, Kim Marchwick, one of the duly-appointed, qualified, and certified acting Court Reporters in and for the State of Montana, do hereby certify that the foregoing 45 pages were reduced to typewritten form using Computer Aided Transcription and constitute a full, true, and correct transcription of my stenographic notes transcribed to the best of my ability.

Signed this 16th day of November, 2020.

/s/ Kim Marchwick 11/19/2020

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